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ABSTRACT

During the past 2 years state laws lowering the age of majority to 18 and other statutes that confer some majority rights on minors have considerably altered the status of young people in our society. In 7 states, the age of majority has been lowered in an effort to relieve young people of the minority disabilities originally intended to protect them from corrupting influences, economic exploitation, hasty action in social relations, and improvident decisions on commercial matters. During the past years Illinois, Michigan, New Mexico, North Carolina, Tennessee, Vermont, and Washington have lowered the age of majority from 21 to 18; in all of these states 18 year olds may contract, own property, make wills, and in all but 1 of the states may marry without parental consent; in 3 states those 18 years of age were authorized to drink intoxicating beverages. This document presents the background of majority legislation, the recent changes in the past regarding the youth of the country. (Author/HS)

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THE AGE OF MAJORITY

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THE COUNCIL OF STATE GOVERNMENTS

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Foreword

Because a number of the States have lowered the age of majority and more States have recently conferred some majority rights on minors, the Council of State Governments decided to make a survey of recent changes in such laws. The report deals with laws which lower the age of majority to 18 in 7 States, statutory changes in 12 other States which confer some majority rights on minors, and analysis of the rights conferred in the new laws. Because of the widespread interest and considerable uncertainty about the residency of college students for the purposes of registering and voting, a survey was made of opinions of Attorneys General on this issue.

The report was prepared by Virginia G. Cook, Research Associate, under the direction of George A. Bell, Director of Research of the Council. It was reviewed by and benefits from the comments of James J. Mynatt, Excutive Director, Tennessee Legislative Council Committee; James T. Havel, Deputy Research Director, Nevada Legislative Counsel Bureau; Cornelius T. Finnegan, Jr., Research Assistant, Massachusetts Legislative Research Bureau; and William O. Hubbard and William H. Raines, Kentucky Legislative Research Commission.

Lexington, Kentucky
January 1972

BREVARD CRIHFIELD
Executive Director
The Council of State Governments

Summary

During the past two years state laws lowering the age of majority to 18 and other statutes which confer some majority rights on minors have considerably altered the status of young people in our society. In seven States, the age of majority has been lowered in an effort to relieve young people of the minority disabilities originally intended to protect them from corrupting influences, economic exploitation, hasty action in social relations, and improvident decisions on commercial matters. During the past two years Illinois, Michigan, New Mexico, North Carolina, Tennessee, Vermont, and Washington have lowered the age of majority from 21 to 18*; in all of these States 18 year olds may contract, own property, make wills, and in all but one of the States may marry without parental consent; in Vermont, Michigan, and Tennessee those 18 years of age were authorized to drink intoxicating beverages. At least 12 additional States removed some minority disabilities.

With respect to jury service, two Attorneys General held that state laws establishing 21 as the age for jury service are not affected by lowering the voting age. Oklahoma tightened its law by requiring jurors to be 21 as well as being electors, and Massachusetts required jurors to be 22. Another Attorney General has held that if a person is 18 or older and satisfies the requirements for being an elector he has satisfied the requirements for jury service since no other law prohibits such service.

The issues involved in age of majority legislation are wide ranging and some are controversial; for some issues factual evidence on both sides is either not available or of insufficient weight to be credible. Thus legislative decisions must sometimes be based on subjective considerations.

Laws which establish one age of majority for females and a different one for males strike some observers as the most inequitable provisions of age of majority legislation. One differentiation is likely to beget others. For example, if females are permitted to marry at 18 it may follow that they should be able to make wills and inherit and convey property at the same age. Some criticism has centered on state laws which emancipated minors for marriage while retaining minority disabilities for single persons.

Those who support lowering the age of majority to 18 doubt that the considerations which gave rise to minority disabilities exist at all today. They contend that young people today are more mature physically and psychologically and better educated than their parents.

To the contrary, those who oppose lowering the age of majority point

*The California age of majority law was adopted after this report went to the printer.

out that many young people are rash and improvident, emotionally unstable, and subject to demagoguery. The number of criminal acts committed by some young people, the accident rate among youthful drivers, and the number of young drug addicts are cited as evidence that youth should not be freed from minority disabilities.

With respect to 18-year-old voting, the controversy hinges on the definition of residency of college students. At one end of the spectrum were holdings that the legal residence of a student is that of his parents and he should register from that residence. To the contrary were views that: (1) a minor emancipated or unemancipated has the right to establish his own domicile with or without consent of his parents or guardians; and (2) intent to stay in a place permanently or temporarily is subjective and not ascertainable by objective observation; therefore, determination of residence for voting purposes should be left to the voter. The California Supreme Court has held that compelling young people who live away from their parents' district to register and vote there, or to register as absentee voters, is an abridgment of equal rights and the Twenty-sixth Amendment to the U.S. Constitution.

E R R A T A

THE AGE OF MAJORITY

RM-473

Page 21, last paragraph, line 8, in reference to Illinois, should read "both males and females must be 21 to drink" instead of "females may drink at 18 and males at 21."

Page 23, table showing minimum age for various offices, Hawaii should read "Governor 30, State Senator and State Representative 20" instead of "Governor 35, State Senator 30 and State Representative 25."

1

Background of Majority Legislation

Adoption of the Twenty-sixth Amendment to the U.S. Constitution in 1971, enfranchising some 11.3 million potential new voters from 18 to 21, and the lowering of the age of majority to 18 by Illinois, Michigan, New Mexico, North Carolina, Tennessee, Vermont, and Washington, have directed attention to the age at which young people acquire majority rights.

In one form or another, most societies have had laws regulating the age at which young people become adults. Over the centuries attainment of majority has frequently been dependent on military service. Under the military discipline of ancient Sparta, a male youth did not reach his majority until 31. At the age of 18 a male child of an Athenian citizen reached majority and could qualify for membership in the Assembly at 20; however, he could not serve on a jury until 30. In ancient Rome a young man could escape his father's rule by performing military service; otherwise, he attained adulthood at 25. In early England the age of majority was 11; with the introduction of heavier armor during the eleventh century it was necessary to raise the age of majority of male youths and by 1620 the age was 21. In our own colonies, an Act of Parliament in 1751 established 21 as the age for performing certain civic duties in the province of Massachusetts Bay.[1]

Under the usages of common law, minors incurred a number of civil disabilities, many of which have been incorporated in state laws presently governing minors and parent-child relationships. Although restricting minors in some respects, these laws defined the duties which parents owed their children (economic, educational, and emotional security); thus, a reciprocal relationship was established.

Definition of Age of Majority

The age of majority is usually defined as "the age at which, by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights."[2] Sometimes the age of majority is understood to mean "age of emancipation." This terminology usually refers to the

complete surrender by the parents of a minor child of the right to the care, custody, and earnings of the child and the renunciation of parental duties. Emancipation may be "express, by voluntary agreement between parent and child or implied from acts or conduct importing consent; it may be conditional or absolute, complete or partial."[3]

Legislation to Protect Minors

Perhaps the substantive range of age of majority legislation may best be suggested by a brief review of legislation to protect minors. Some laws are intended to protect minors by limiting their contact with potentially corruptive influences; statutes regulating intoxicating liquor, pool halls, and prohibitions against contributing to the delinquency of a minor fall under this category. Compulsory and permissive school attendance laws are designed to prepare minors for functioning vocationally and assuming the responsibilities of adult citizenship in a democratic society. Other laws regulating child labor and employment in hazardous occupations are aimed to protect children from physical harm, economic exploitation, and deprivation of schooling. Still other legislation restricts the power of minors to make important economic decisions before they are emotionally and mentally mature; for example, laws establishing the age at which young people have the legal capacity to contract, own or convey property, or make a will. Laws requiring parental consent for marriage are intended to protect minors from hasty or premature action in social relations. Other laws establishing special judicial procedures and in some cases special courts and corrective institutions for juveniles are designed to protect them from contact with hardened criminals and from the full impact and severity of laws governing adult behavior. Regulations governing the age for engaging in occupations and professions are designed in part to protect society against decisions made by those of immature judgment.

A survey of the age for assumption of adult responsibilities conducted by James T. Havel, Deputy Research Director of the Nevada Legislative Counsel Bureau, identified about 40 different actions, including the following: obtaining accident and health insurance, employment certificates, credit cards, fishing, boating, hunting and marriage licenses, and admittance to public places, movies and bowling alleys; borrowing money, making bank deposits, and having access to deposit boxes; changing name and residence; engaging in hazardous occupations; donating blood; buying cigarettes and intoxicating beverages; testifying as a competent witness; making contracts and wills; compulsory school attendance; observance of curfew; establishing jurisdictional age in courts; liability for imposition of the death penalty; possessing and using weapons; owning and voting of corporate stocks and owning savings and loan association shares; voting

in elections for public office; establishing eligibility for aid to dependent children; permitting an adult to acquire in good faith a negotiable instrument executed by a minor without informing the holder of the instrument of the existence of a prior claim; gambling; tatooing; liability of holder of a driver's license for negligence or willful misconduct; child molesting; using age as a defense against liability of parents and guardians for willful misconduct of minor resulting in death, injury or property damage; receiving medical treatment and birth control information; assuming responsibility for debts; and liability for committing statutory rape and criminal acts.[4]

Disparities in Age of Majority Laws

In our federal system, age of majority laws are within the province of the States. Therefore, such laws vary from one State to another as to inclusiveness, explicitness, and substantive content. Given the diversity of the substance of age of majority legislation and its piecemeal nature, it follows that such statutes do not constitute a distinct and codified body of law; instead, majority laws are scattered throughout the statutes. Oftentimes, new laws have been adopted without giving sufficient consideration to reconciling them with existing ones. These factors in part account for the uncertainties, ambiguities, and unintended inconsistencies of some age of majority laws. The granting of certain rights and the withholding of others, perhaps justified by particular circumstances in the past, would, in some instances, probably be difficult to justify now. For example, a report of the Alaska Legislative Council in 1966 found a number of discrepancies between the constitution and various age of majority statutes. The compiler of the compendium stated: "In Alaska, a twenty-year-old borough assemblyman or city councilman who may incorporate a cooperative, devise a will, convey land and donate his eyes to a hospital, must have the written consent of his parents to get married."[5]

Majority Laws in England and Canada

Age of majority laws have been changed or changes are being considered in several other countries. In England the Lord High Chancellor appointed an 11-member committee chaired by Sir John Latey to study the age of majority; in 1967 the committee issued a widely publicized report named for its chairman; two members of the committee who issued a minority report pointed out that there was no substantial demand even among the young to lower majority age. Two years later Parliament adopted the Family Law Reform Act,* effective January 1, 1970, and

*For Citation to Statutes see p. 43.

applicable to England and Wales. This act made 18 the majority age for most legal transactions; it amended 32 laws, rules, or regulations. The Latey Committee was not authorized to consider enfranchising 18 year olds as that was already being investigated by another committee. The majority report also recommended 18 as the age for obtaining passports and donating blood; however, Parliament took no action on these proposals.

Several Canadian provinces have recently made changes in drinking laws applicable to young people; Ontario has given those 18 to 21 years old the right to vote and to hold office.

General Considerations

Those in favor of lowering the age of majority to 18 declare that the historical reasons for establishing the attainment of majority at 21 are no longer applicable. Moreover, young people in this age group are better educated than their parents and even their older brothers and sisters. A report of Michigan Governor William G. Milliken's Special Commission on the Age of Majority stated that:

> Of the seven million individuals eighteen and nineteen years of age 50 percent are currently enrolled in school, 11 percent below the college level and 39 percent in college. Of the 50 percent not in school, 68 percent are high school graduates and 32 percent are not. As of October, 1969, about 63 percent of the men and 81 percent of the women sixteen to twenty-one years old who were out of school and in the labor force, had at least a high school education compared with 56 and 77 percent, respectively, in 1964.[6]

Another argument is that young people evidence maturity by participation in the Peace Corps, VISTA, and other humanitarian causes.

The majority report of the Latey Committee stated that it was not only safe to give additional responsibilities to 18 year olds but undesirable and possibly dangerous to withhold them. Majority members of the committee believed that to keep responsibility from those who are ready and able to assume it was more likely to make them irresponsible than to help them.

A representative of the British Medical Association told the Latey Committee that there were no psychological reasons for placing the age of majority at 21 nor any psychological objection to lowering the age. He concluded that from the physical aspect and very probably from the psychological aspect, the adolescent of today matures earlier than in previous generations.

Many of those who want to lower the age of majority contend that no age distinctions should be made as between private and public rights.

They believe that private and political rights must be granted to those 18 years of age to heal the breach between the generations.[7]

On the other hand, some other witnesses before the Latey Committee asserted that the evidence that young people mature earlier psychologically was not entirely convincing. They suggested that lengthening the period of formal education had postponed the time at which youths made adult decisions. On this point, Dr. W. Walter Menninger, staff psychiatrist at Menninger Institute, has stated that "enforced dependency and affluence encourage an infantilization of the adolescent, provoking and sustaining our perception of him as immature, thus giving rise to an impressive self-fulfilling prophecy."[8] It was also claimed that a reduction of the age at which parents have "residual authority" over their family would sharply change attitudes of parents toward the welfare of the young. Another witness suggested that as life expectancy has gone up, it would be more logical to raise the age of majority instead of lowering it.

2

Recent Changes in Legislation

The new laws conferring age of majority rights on those 18 to 21 in Illinois, Michigan, New Mexico, North Carolina, Tennessee, Vermont, and Washington are not entirely identical, although all the States except Illinois made the change in wholesale fashion.

Vermont

The Vermont act, which went into effect on July 1, 1971, lowers the age of majority from 21 to 18. It provides that:

> Persons of the age of eighteen years shall be considered of age and until they attain that age, shall be minors. Whenever referred to in the laws of this State, a person who is an adult or who has reached majority shall be a person of eighteen years of age or more.

The new law amends the age provisions of 19 laws and repeals another. Three changes relate to the licensing of establishments selling alcoholic beverages and authorizing their sale to those 18 years of age; six changes and a new section relate to voting procedures and suffrage qualifications; four changes remove the jurisdiction of juvenile courts over those from 18 to 21; two amendments concern custody of property; another change lowers to 18 the age provisions of the Uniform Gifts to Minors Act; one amendment defining residence of college students for purposes of establishing tuition rates does not relate directly to age of majority. One change makes those 18 years of age liable for poll taxes; another concerns age of marriage without parental consent. The repealed statute had made 21 the age at which a minor might give acquittance (a written discharge whereby one is freed from an obligation to pay money or perform a duty).

Nevertheless, the new law creates some incongruities. For instance, those 18, 19, and 20 years of age are now subject to prosecution as adults under criminal law but court rules bar them from jury service. Those 18 through 20 years old can now buy land and obtain mortgages but cannot

hold a real estate broker's license because a section of the land sales law was not changed. One effect of the new law was to release some 60 persons previously found to be juvenile delinquents and placed in the Weeks School in Vergennes until "their age of majority." Attorney General James Jeffords stated that several hundred young people who have been placed in other state institutions will also be affected by the new law.[9]

Tennessee

Tennessee enacted three statutes to change the age of majority from 21 to 18. Section three of the Legal Responsibility Act of 1971 passed May 11 provides that:

> Notwithstanding any laws to the contrary, any person who is eighteen years of age or older shall have the same rights, duties and responsibilities as a person who is twenty-one years of age or older.

Section two of this act amends five statutes by changing the age provisions from 21 to 18. The amendments relate to: selling and conveying real estate; commencing court actions; furnishing alcoholic beverages to children or sending children to buy alcoholic beverages; employment in the manufacture, storage, sale, or distribution of intoxicating beverages; and carnal knowledge of a female over 12 but under 18.

The other major change, the Professional Responsibility Law of 1971, lowers from 21 to 18 the age required to engage in public accountancy, practice of basic sciences, chiropody, dentistry, medicine, optometry, osteopathy, pharmacy, veterinary medicine, and sale of real estate; educational and experience requirements for most of these occupations would be likely to bar an 18 year old anyway. The law also contains a provision that would allow persons 18 years of age or older to enter into any profession or perform any service notwithstanding any other laws to the contrary which may require a higher age limit.

To avoid hardships to very young married persons, another act permits a court to remove partially for specified purposes the minority of anyone who is at least 16 years of age and married.

It has been reported that in Tennessee many banks, department stores, and real estate agents have said they will not take a chance on dealing contractually with the new adults unless the law's validity is unmistakable.[10]

Michigan

The Michigan Age of Majority Act of 1971 provides that:

> Notwithstanding any other provision of law to the contrary, a person who is eighteen years of age but less than twenty-one years of age when this act takes effect, and a person who attains eighteen years of age thereafter, is deemed to be an adult of legal age for all purposes whatsoever and shall have the same duties, liabilities, responsibilities, rights and legal capacity as persons heretofore acquired at twenty-one years of age. This act supersedes all provisions of law prescribing duties, liabilities, responsibilities, rights and legal capacity of persons eighteen years of age through twenty years of age different from persons twenty-one years of age including but not limited to the following enumerated public acts.

The law amends the age provisions of more than 20 statutes. Eight changes concern intoxicating beverages; three changes regulate purchase and use of weapons and hand guns; several changes relate to settlement of estates and dowry; other amendments relate to obscene books, prints and pictures; pari-mutuel or auction pool betting; divorce proceedings; gifts of securities; licenses to operate motor vehicles and school buses; voluntary admittance to mental health institutions; the jurisdiction of probate courts; purchase of cigarettes; and possession and sale of fireworks, blank cartridges, pistols, or toy pistols in which explosives are used. A new provision emancipates a minor upon marriage, during active duty in the armed services, by written agreement made by parent, upon abandonment by parent, or by court order; the act provides that emancipation might be revoked by agreement between parents and minor.

North Carolina

The North Carolina age of majority law, which became effective with the ratification of the Twenty-sixth Amendment to the U.S. Constitution, provides that:

> The common law definition of minor insofar as it pertains to the age of the minor is hereby repealed and abrogated. A minor is any person who has not reached the age of eighteen years. All laws and classes of laws in conflict with this act are hereby repealed.

This act was followed by a clarifying statute which amends a number of other laws.

Illinois

Illinois in August 1971 enacted a law which removes the distinction

between the legal age for males and females and provides that all persons are considered to be of legal age at 18 except for the Uniform Gifts to Minors Act. Formerly the age of majority was 18 for females and 21 for males. Other Illinois acts permit persons to become notaries public at 18 and males to bring a cause of action and serve as executor of an estate at 18; the age for males to serve as administrator was lowered to 18 to conform with the age requirement for females. The legal age for drinking is now 21 for both males and females; males 18 to 21 must obtain parental consent to marry while females may marry at 18 without parental consent. Illinois did not specifically amend a large number of statutes establishing the age of majority for various purposes as did Vermont, Michigan and Tennessee.

Washington

The Washington law retains 21 as the age of majority except that "all persons shall be deemed and taken to be of full age for specific purposes at the age of eighteen years and upward." The law establishes 18 as the age of majority for the following purposes: marry without parental consent, execute a will, make contracts, sue and be sued, and make decisions concerning medical treatment, including consenting to surgical operations. No change was made with respect to the age for owning property. The legal age for drinking remains at 21.

In 1971 an extraordinary session of the Washington Legislature adopted comprehensive modifications of other laws to lower the age of majority from 21 to 18.

New Mexico

The age of majority legislation in New Mexico has a three-pronged effect. It provides that:

> (1) Any person who has reached his eighteenth birthday shall be considered to have reached his majority and is an adult for all purposes the same as if he had reached his twenty-first birthday;
>
> (2) Any law conferring any right or privilege, or imposing any duty or obligation, upon any person who has reached his twenty-first birthday shall apply to any person who has reached his eighteenth birthday;
>
> (3) Any law which denies any right or privilege to persons who have not reached their twenty-first birthday shall apply only to persons who have not reached their eighteenth birthday.

Exceptions to the 18-year-old rule were made for the purchase, sale, licensing, and other matters pertaining to alcoholic beverages, and the Uniform Gifts to Minors Act; in these two instances the age of 21 was retained.

The Director of the New Mexico Legislative Council observed that:[11]

> It is impossible to think of all the situations that could and will be affected by the new law . . . Some of the problems that come to mind are: (1) children of deceased veterans have certain benefits, and some of these benefits extend beyond eighteen years of age under certain circumstances (such as attendance in college). Will this "age of majority" act alter this, or the federal attitude? (2) social security benefits can continue under the same circumstances beyond the age of eighteen; (3) a juvenile may be placed in an institution until he is twenty-one; if he is incarcerated at age fifteen, is he entitled to be treated as an adult if he reaches the age eighteen while in the institution?

He also stated that there may be problems concerning the conflict between New Mexico law and that of other States. What happens to an 18 year old who enters into a contract in New Mexico to be performed in Colorado, or who later moves to California? "The general rule of law is that the law, where the contract was entered into, controls, but this is a tricky area of law and might cause some problems."

Some bankers in New Mexico were reported to be inclined to question the credit of 18-year-old applicants for loans.

Changes in Other States

The age at which majority is attained varies, although in most States it is 21. The two States most recently achieving statehood, Alaska and Hawaii, were among the first to grant most age of majority rights to those below 21 — Alaska gave most majority rights, except for marriage and drinking, to those 19 years of age in 1970; in Hawaii the age of majority has been 20 for males since 1859 and for females since 1919.

Removal of disability for minors usually is accomplished on a subject-by-subject basis. In Kentucky a 1952 law permitted minor veterans of World War II to buy a home under Veterans Administration financing plans. In 1955 the voters of Kentucky ratified a constitutional amendment permitting 18 year olds to vote in primary or general local, state, and national elections subject to the same residency and registration requirements as all other voters. In 1964, the Legislature passed a law to give 18 year olds some of the privileges of adults. The 1964 law gave rise to a good deal of confusion and four years later clarifying statute was passed.

The Kentucky Court of Appeals has not considered a case involving age of majority or contract by a minor since 1968; the Director of the Kentucky Legislative Research Commission believes that a court would hold that the 1968 law limited only the purchase of alcoholic beverages and care and treatment of handicapped children to persons 21 years of age and over.[12] In 1970, Kentucky made those 18 years of age eligible for jury duty and eligible to apply for certain professional licenses. Another Kentucky law authorizes those 18 years of age to make promissory notes, conditional sales contracts, and any other consensual transaction.

In Georgia, those 18 years of age have been eligible to vote since 1955, to make contracts, promissory notes, conditional sales contracts, and any other consensual transactions. Contracts of disabled veterans 18 years of age or older who have been declared eligible by the Veterans Administration for specially adapted houses and VA grants are effective as though such minor veterans were of majority age. A 1970 act permits residents who are 18 years of age or over to donate their blood without the consent of their parents or guardians.[13] The law also provides that minors may give binding consent to treatment for venereal disease or drug abuse without the consent of their parents or guardians. A 1971 act permits any minor 18 years of age or over to consent to any surgical or medical treatment or procedures not prohibited by law which a physician might recommend or prescribe. Any parent, whether an adult or a minor, may give consent to treatment for his minor child; any married person, whether adult or minor, may give consent for medical treatment for himself or for his spouse. Any female, regardless of age or marital status, may give consent to medical treatment in connection with pregnancy or childbirth.

The piecemeal approach to age of majority legislation is illustrated by recent actions in many States. In Arkansas, a 1971 act authorized a minor 18 years of age to donate blood to any nonprofit blood bank or licensed hospital without parental consent. Another law of 1971 authorized a minor 18 years of age or older to be employed as a musician, in food preparation, and to work in the housekeeping department of an establishment authorized to serve mixed drinks.

Although accepting the recommendation of the Legislature's Judiciary Committee that the age of majority not be lowered, Massachusetts went part of the way in 1971 by authorizing 18 year olds to make a will, register to vote, contribute to political campaigns, and be eligible for appointment as firefighters; males 18 years of age were enabled to marry without parental consent.

Montana in 1970 lowered the age of majority from 21 to 19 for making a contract, making a will, drinking, owning property, marrying, and serving on a jury.

During 1971, Maryland adopted several laws relating to the age of

majority. A married female 16 years of age is authorized to hold and convey property and make a deed and mortgage with her husband; another law provides that either party to a marriage who is 18 years of age or older may file or defend a bill of complaint for divorce or annulment; and minor veterans are made eligible for the benefits of the Servicemen's Readjustment Act of 1944. Minors are authorized to consent to treatment of mental and physical disorders. In Prince George's County, restrictions are placed on the presence of 18 year olds in places where intoxicating liquors are sold, and in Allegany and Prince George's Counties 18 year olds are permitted to be employed in a tavern but not in selling and serving of alcoholic beverages.

Connecticut in 1971 adopted laws permitting those 18 years of age to prosecute or defend a divorce or legal separation action, donate blood without parental permission, and consent to medical, dental, health, and hospital services. A proposal to lower the age of majority passed the Connecticut Senate but not the House during 1971. The Governor has appointed a commission on the age of majority which is conducting hearings throughout the State.

In Maine, a law effective October 1, 1969, made 20 the age of majority. In other examples of recent legislation, Nebraska in 1969 established 20 as the age for contracting, making a will, drinking, and owning property; Oregon in 1971 passed a law permitting those 18 years of age to enter into binding contracts and to sell liquor in a package store; North Dakota in 1971 lowered from 21 to 18 the age for contracting and owning property but made no changes in the age for marrying, drinking, and making wills; and Florida passed an act in 1970 to remove the disabilities of married minors with respect to contracting, suing, and managing an estate.

3

Analysis of Legislation

Power to Contract

The import of age of majority legislation may be better appreciated by an examination of the circumstances which have given rise to proposals to change these laws. The common law sought to protect the young against economic exploitation and their own improvidence by restricting their capacity to contract, own property, make wills, and sue and be sued. The courts developed the rule that all acts and contracts of those under majority age are generally considered void, voidable, or binding depending on whether the contract was prejudicial or beneficial to the minor's interest. Undoubtedly, some contracts are so inherently beneficial to the minor that he should be bound by them; alternatively, the subject matter may be so well regulated that the minor does not need protection.

Today, most courts have adopted the view that a minor's acts and contracts are voidable and not void; thus, when he becomes of age a youth may either ratify or disaffirm the contracts he made when a minor. The laws of about a dozen States provide for ratification of contracts upon attainment of majority. Although a minor is in many circumstances incapable of binding himself absolutely this does not, at least in some States, affect his capability to contract. It does, however, warn the other party that where considerations of value are involved he deals with the minor at his own peril.

A minor may not disaffirm a contract if he has lied about his age or failed to return consideration received under a contract; neither may he disaffirm a contract which the State has made binding under exceptional circumstances. The right to disaffirm is a privilege granted by the State which can be changed. There may be other limitations on disaffirmance; for example, the California courts have held that a minor's contract to act or participate in professional sports cannot be disaffirmed, if approved by the Superior Court.

One approach to the problem of disaffirmance is illustrated by a New York law. It provides that a minor may not disaffirm a contract for reason

of his minority if the contract was reasonable and provident when made and concerns a business in which the minor is engaged.

Some state laws regulating minority contracts distinguish between those made by single and married persons. For instance, Kansas law states that for both males and females minority extends to 21 years. However, it also provides that every legally married person 18 or older shall be considered of majority age as long as such marriage relation continues; thus, a married but not a single person 18 years of age may be bound to a contract in that State.

Prior to lowering the age of majority, the State of Tennessee had a provision concerning minority contracts which assured flexibility while affording the minor considerable protection. The statute permitted an 18-year-old minor to petition a court to remove minority disabilities; after a hearing at which the minor's parents were made defendants (unless they joined in his petition), the minor's other relatives or friends could appear to contest removal of disabilities. One advantage of this procedure was that the court investigated whether the minor was sufficiently mature to contract. A number of other States have similar statutes.

It is a general rule that a minor's executory contracts (those imposing liabilities at a future date) are inoperative until ratified upon reaching majority; ratification must be positive and explicit and the minor must be informed that he is not legally bound by the executory agreement. Silence and inaction for an unreasonable length of time after attaining majority may amount to ratification. Oklahoma law permits a minor to disaffirm a contractual obligation up to and including within one year of the time he reaches majority. This provision gives the minor protection against a bad contract as well as warning the other party to deal with the parent or guardian where considerations of value are involved.

In some States an 18 year old, because he lacks the power to contract, cannot buy a car by installment payments although the State licenses him to operate the car. Massachusetts has attempted to meet this problem by permitting a minor 18 years of age or older with the written consent of his parent or guardian to contract for the purchase, repair, or sale of motor vehicles, parts, or accessories; another Massachusetts law provides that any minor 16 years of age or over shall be competent to contract for a motor vehicle liability policy as if he were 21. New Hampshire adopted a somewhat similar law effective in 1971; it authorizes a minor 18 years of age or older with the written consent of one parent or guardian to contract for the purchase, sale, or repair of motor vehicles, parts, and accessories; if otherwise legal, such contracts have the same legal effect as if no minority existed. Delaware has a similar law.

It has been estimated that today's minors spend more than $12 billion annually and a sizable proportion of this is on credit. One needs

only to visit a department store and many other retail stores or read their advertisements to get more than an inkling of the importance of the teenage market to many commercial firms and advertisers. On the other hand, the plight of the young couple whose means are substantially encumbered by installment payments on everything from perambulators to television sets is perhaps too common. Another approach to these problems would be to improve the quality and increase the amount and dissemination of consumer information regarding installment payments, interest rates, and household budgeting.

A young married couple in some States may not be able to buy or mortgage a home because they cannot contract. A young man may be unable to take a job which requires him to contract for the requisite equipment, supplies, or tools. A veteran may be unable to take advantage of the Servicemen's Readjustment Act of 1944 (the G.I. Bill of Rights). However, the Latey Committee found that about 20 States permitted minor veterans to contract; they also found that 7 States permitted minors to borrow money for educational purposes. The laws of several States, including the new Washington legislation, permit minors 15, 16, and 17 years of age to contract to buy insurance. The National Conference of Commissioners on Uniform State Laws has proposed a Uniform Student Capacity to Borrow Act.

Capacity to Own Property

The Latey Committee reported that 42 States required males to be 21 to hold property; 31 States required females to be 21 to own property; 11 States permitted married minors to own property; one State required males to be 18; 12 States required females to be 18, one State 19, and one State 20.

Most of the considerations relative to contracts are equally pertinent with respect to holding property, which usually requires the power to contract. Many youths are self-supporting before they reach the age of majority; they may also be heads of households and parents of children. In these circumstances it may be vital to the career and future prospects of such young people that they be able to own property; many of them pay local, state, and federal taxes.

The Judicial Committee of the Massachusetts Legislature, which studied the proposal to give 18 year olds the right to hold property, took a strongly negative position. The council stated that under the Massachusetts version of the Uniform Gifts to Minors Act, the custodian holds the minor's property until the age of 21. To change this arrangement would have "a vast effect on property rights in Massachusetts."

Capacity to Make Wills

Most of the considerations relative to contract and property apply equally well to the capacity to make wills. The logical consequence of owning property is the capacity to dispose of it in event of the owner's death. A married minor may be in an untenable position if he cannot bequeath his property to his wife or other heirs. A married minor who is a member of the armed forces may, for his own peace of mind, need to be able to make a will. According to the Latey report, six States provided that members of the armed forces could dispose of their property at 18. At that time, the age when young persons might make wills was 21 in 23 States and 18 in 20 States; Alaska and Texas gave the capacity to make wills at 19, Hawaii at 20, Georgia and Maryland at 14, Louisiana at 16 and Maryland at 12.

Capacity to Marry

Changes in the age at which young people may marry without parental consent since 1949 are shown in the table on the next page. During the past 22 years, the minimum age at which marriage may be contracted has increased for both males and females in 7 States and for males in 3 States. The minimum age was lowered for males in 2 States. The table also shows that in 1971 the minimum age for marriage with parental consent was the same for both men and women in 9 States. The minimum age for marriage without parental consent was the same for men and women in 23 States, with the remaining 28 jurisdictions establishing a higher age for males. Presumably, the older age requirement for young men is based on their role as breadwinners. Some observers doubt that the distinction now has much rational basis. Others contend that the distinction occurs because the 18-year-old female is as mature as the 21-year-old male.

Nineteen States emancipating upon marriage are:

Alabama
Alaska (females)
Iowa
Kansas
Kentucky (partial)
Louisiana
Maine (partial)
Maryland
Massachusetts (also by agreement with parents; does not necessarily grant majority rights)
Michigan
Mississippi (partial)
Montana
Nebraska (females)
New Hampshire
New Mexico
North Dakota (also by agreement with parents)
Oklahoma
South Dakota
Utah

Discrepancies in the status of those 18 to 21 who are single and married in California are shown in the table on page 20. These were in

MARRIAGE LAWS*

State or other jurisdiction	1949		1971			
	Minimum marriage age with parental consent		Minimum marriage age with parental consent		Age below which parental consent is required	
	Male	Female	Male	Female	Male	Female
Alabama	17	14	17 (b)	14 (b)	21	18
Alaska	....	....	18 (c)	16 (c)	19	18
Arizona	18	16	18 (c)	16 (c)	21	18
Arkansas	18	16	18 (c)	16 (c)	21	18
California	18	16	18 (b,d)	16 (b,d)	21	18
Colorado	16	16	16 (d)	16 (d)	21	18
Connecticut	16	16	16 (d)	16 (d)	21	21
Delaware	18	16	18 (c)	16 (c)	19	19
Florida	18	16	18 (b,c)	16 (b,c)	21	21
Georgia	17	14	18 (c,e)	16 (c,e)	19 (e)	19 (e)
Hawaii	....	....	18	16 (d)	20	20
Idaho	14 (a)	12 (a)	18 (d)	16 (d)	21	18
Illinois	18	16	18 (c)	16 (c)	21	18
Indiana	18	16	18 (c)	16 (c)	21	18
Iowa	16	14	18 (c)	16 (c)	21	18
Kansas	18	16	18 (d)	18 (d)	21	18
Kentucky	16	14	18 (b,c)	16 (b,c)	18	18
Louisiana	18	16	18 (d)	16 (d)	21	21
Maine	16	16	16 (d)	16 (d)	20	18
Maryland	18	16	18 (c)	16 (c)	21	18
Massachusetts	18	16	18 (d)	16 (d)	18	18
Michigan	18	16	(f)	16 (c)	18	18
Minnesota	18	16	18 (b)	16 (g)	21	18
Mississippi	14 (a)	12 (a)	17 (d)	15 (d)	21	21
Missouri	15	15	15 (d)	15 (d)	21	18
Montana	18	16	18 (d)	16 (d)	21	18
Nebraska	18	16	18 (c)	16 (c)	20	20
Nevada	18	16	18 (b,d)	16 (b,d)	21	18
New Hampshire	14	13	14 (h)	13 (h)	20	18
New Jersey	14 (a)	12 (a)	18 (d)	16 (d)	21	18
New Mexico	18	16	17 (c)	16 (c)	18	18
New York	16	14	16	14	21	18
North Carolina	16	16	16	16 (c)	18	18
North Dakota	18	15	18	15	21	18
Ohio	18	16	18 (c)	16 (c)	21	21
Oklahoma	18	15	18 (c)	15 (c)	21	18
Oregon	18	15	18 (g)	15 (g)	21	18
Pennsylvania	16	16	16 (d)	16 (d)	21	21
Rhode Island	18	16	18 (d)	16 (d)	21	21
South Carolina	18	14	16 (c)	14 (c)	18	18
South Dakota	18	15	18 (c)	16 (c)	21	18
Tennessee	16	16	16 (d)	16 (d)	18	18
Texas	16	14	16	14	19	18
Utah	16	14	16 (b)	14 (b)	21	18
Vermont	18	16	18 (d)	16 (d)	18	18
Virginia	18	16	18 (b,c)	16 (b,c)	21	21
Washington	14 (a)	12 (a)	17 (d)	17 (d)	18	18
West Virginia	18	16	18 (b)	16 (b)	21	21
Wisconsin	18	15	18	16	21	18
Wyoming	18	16	18	16	21	21
Dist. of Columbia	....	....	18 (b)	16 (b)	21	18

*Source: *The Book of the States*, 1950-51, p. 373 and 1972-73; from tables prepared by the Women's Bureau, U. S. Department of Labor.

(a) Common-law marriage age.

(b) Parental consent not required if minor was previously married.

(c) Statute establishes procedure whereby younger parties may obtain license in case of pregnancy or birth of a child.

(d) Statute establishes procedure whereby younger parties may obtain license in special circumstances.

(e) If parties are under 19 years of age, proof of age and the consent of parents in person required if parents are residents of State. If a parent is ill, an affidavit by the incapacitated parent and a physician's affidavit to that effect is required.

(f) No provision in law for parental consent for males.

(g) Parental consent and permission of judge required. In Oregon, permission of judge required for male under 19 years of age or female under 17.

(h) Below age of consent and above minimum age parties need parental consent and permission of judge which is given only for special cause.

effect prior to the adoption of the new State age of majority statute passed in December 1971.

Discrepancies in Rights of Single and Married Young People in California[14] (Ages 18 to 21)

	Unmarried	*Married*
Contractual liability	Can disaffirm a contract	Cannot disaffirm a contract
Delegation of power	Cannot give a delegation of power	Can give a delegation of power
Enforcement of rights	May enforce rights by civil action or other legal proceedings in the same manner as an adult, except such action must be conducted by a guardian	May conduct own legal action for enforcement of rights: guardian is not required for conducting action
Party to civil action	When party to civil action must be represented by a guardian	Need not be represented by a guardian in civil action
Control over assets and earnings	Estate must be handled by a guardian	Can handle own estate
	Proceeds from sale of interest held in name of unmarried minor paid to guardian and placed in trust until minor reaches 21 years of age	Proceeds paid directly to the married minor
	Do not have exclusive control over their assets and earnings	Do have exclusive control over their assets and earnings
Residence	May not establish legal residence separate and apart from parents or guardian	May establish legal residence separate and apart from parents or guardian
Civil liability connected with operation of a motor vehicle	Parent or guardian is civilly liable for any negligence or willful misconduct of that person while he is operating a motor vehicle	Minor is personally liable for any negligence or willful misconduct he commits while operating a motor vehicle

In Britain, and in the United States as well, higher earnings among teenagers encourage early marriage. However, the fact that youngsters are prolonging the duration of their formal education may reduce some of the demand for early marriage.

A special survey in England of those 16 to 24 years of age revealed that by a vote of two to one, young people in that country opposed any lowering of the age to marry without parental consent because statistics showed that young marriages were three times more likely to end in divorce courts than those between older persons.

In some instances very young marriages may be a brake on a young man's career. A Royal Commission on Marriage and Divorce in 1956 concluded that improved marriage guidance services might put a brake on hasty and ill-considered marriages. Many observers contend that the present marriage laws requiring parental permission give "valuable power" to parents to make children stop and think.

Those who are opposed to lowering the marriage age also suggest that the late teens are a period of trial, adjustment, and inconsistency; experience and judgment are lacking in many young people even though they mature faster physically than their parents.

Some believe that the parental veto over young marriages hardens family relationships and has an effect opposite to that intended. It is also claimed that improved methods of birth control enable youngsters to postpone having a family until they can afford it.

In England young people denied parental consent to marry may take the matter to court. These judicial procedures are reported to work well.

Age for Drinking

There is more unanimity in existing laws regulating the age for drinking than for most other issues. Before the recent changes in Vermont, Tennessee, and Michigan, only Louisiana and New York permitted drinking of any intoxicating beverage at 18; Hawaii and Nebraska permit drinking at 20. Kentucky has retained the age of 21 for drinking as did New Mexico and Washington when, in 1971, they changed the age of majority. Illinois also retained the prohibitions concerning drinking; females may drink at 18 and males at 21. Ten States permitted youth to drink beer at 18; however, Alaska in 1970 changed its laws to permit those 19 years of age or over to buy and sell intoxicating liquors including beer and wine. The Alaska legislation makes a valid driver's license acceptable as proof of age. South Dakota permits beer drinking at 19 and Maine at 20; North Carolina permits wine drinking at 18. In Oklahoma beer cannot be sold to minors; thus females of 18 may purchase it while 20-year-old males cannot.

In Michigan the proposal to lower the drinking age was the most debated issue of all those related to the age of majority legislation. However, the new Michigan statute, unlike that of Vermont, establishes no special identification procedures for young drinkers. Vermont requires those 18 years of age or over and less than 25 to apply on a specified form to a liquor control board for an adult identification card and to present a certified copy of their birth record and a photograph. The applicant pays a one dollar fee; the board issues a tamper-proof identification card.

One argument frequently made to support drinking at 18 is the difficulty of enforcing an age limitation unless identity cards with photographs are required. It is also urged that wholesale violation of age restrictions for drinking in some States causes disrespect for other laws. Wrongful prosecution of tavern owners may result when the bartender accepts the word of a minor in good faith. It is also claimed that those 18 years of age are sufficiently mature and disciplined to make their own decisions with respect to drinking. It is said that age restrictions encourage deception and hypocrisy by those 18 to 21. In many parts of the world drinking begins in the early teens without catastrophic results.

Those opposed to 18-year-old drinking contend that 18 year olds are not sufficiently disciplined to drink without any restrictions; it is claimed that they do not realize the results of over-indulgence. The fatal accident rate for auto drivers under 21 is high and some contend that permitting drinking at 18 might result in more fatal auto accidents.

Eligibility for Jury Service

Since in numerous States those qualified to vote may serve on juries, the question is presented of the eligibility of those 18 to 21 years of age for jury service. Florida Attorney General Richard Shevin has stated that since the Twenty-sixth Amendment makes no mention of jury service, the Florida law requiring jurors to be 21 or over prevails. He declared that the Legislature would have to lower the age requirement for jury service to enable 18 year olds to serve. Helgi Johanneson, North Dakota Attorney General, arrived at the same conclusion by a somewhat different line of reasoning. Effective on October 1, 1971, Oklahoma law requires those serving on grand and petit juries to be 21 in addition to being qualified electors. Illinois retained the 21-year-age requirement for jury service and in Massachusetts the age is 22.

On the other hand, Gary K. Nelson, Arizona Attorney General, has held that "if a person 18 years old or older satisfies the requirements of an elector, he automatically has satisfied the requirements for being a juror." In 1970 Kentucky and Alaska adopted laws enabling 18 and 19 year olds, respectively, to serve on juries. Washington and Oregon made

18 year olds eligible for jury service in 1971. Starting with the drawing of 1972 jury panels, Nevada will permit electors 18 through 20 years of age to serve on trial and grand juries. The 1971 Washington age of majority law also permits those 18 years old to serve on juries.

Eligibility to Hold Public Office

With respect to public office holding by 18 year olds, it may be noteworthy that the first four States to lower the voting age retained an age requirement of at least 21 for office holding. Minimum age for various offices in these States is shown below:

	Governor	State Senator	State Representative
Alaska	21	21	21
Georgia	30	25	21
Hawaii	35	30	25
Kentucky	30	30	24

Many State constitutions provide for specific age requirements for some of the more important statewide offices.

Where age for office holding is not specified in the constitution, the lowering of the voting age may also lower the office-holding age. Frank J. Kelley, Michigan Attorney General, rendered an opinion that stated, "Persons who are not qualified to vote for a particular office are ineligible to hold such office." The opinion was based upon *Attorney General* v. *Abbott,* 121 Michigan 540 (1899). In Ohio, the Secretary of State has advised Board of Elections, "unless the Ohio Revised Code or Constitution provides a specific exclusion from eligibility to run for state office for a given office seeker, he would be eligible to run if eligible to vote. Since eighteen year olds are now 'electors' under present Ohio law, they are not excluded from elective or appointive office by reason of age." Lee Johnson, Oregon Attorney General, has held that a "registered eighteen year old may serve as an official registrar of voters unless prevented by some inherent disability arising out of his status as a minor."

4

Residency of 18-Year-Old Voters

Since the founding of our country, the franchise has been greatly extended; in 1789 about three-quarters of the white males in the North and half of the white males in the South could vote.[16] Legislation after the Civil War attempted to enfranchise the Negro; in 1920 the ballot was granted to women. By 1964 the President's Commission on Registration and Voting Participation estimated that 90 percent of the adult population could vote.[17] In 1971, with the adoption of the Twenty-sixth Amendment to the U.S. Constitution which lowered the voting age to 18, it has been estimated that some 11.3 million new voters were enfranchised, and about 4 million of the new voters are college students.

The most controversial issue to emerge under the Twenty-sixth Amendment is determination of the place where college students reside for voting purposes.

Residential requirements for voting were first imposed to guard against corruption at the polls, insure that voters were bona fide residents, well informed about local issues, and had a stake in the community; the regulations were aimed at "gangs of floaters and the organized voting of transients" and new emigrants. Today, according to the U.S. Bureau of the Census, one of every five persons changes residence every year. Those between 20 and 24 years of age are the most mobile age group.

The Vermont age of majority legislation states, "the residence of a person for the purpose of voting at an election shall be deemed to be in the town where he is domiciled as his permanent dwelling place, with the intention of remaining there indefinitely or returning there if absent from it." The law also provides that persons serving in the armed forces, merchant marine, or while a student in a different State, or in an institution shall neither gain nor lose residence for the purpose of voting. Vermont requires 30 days of residence to vote for the President and 90 days for congressmen, county officials, and state legislators. With respect to the taking of the freeman's oath and residency in the State, senatorial, or representative district or county, the statute treats voters 18 to 21 the same as other voters.

The law also requires that a person shall not be qualified to vote in any election until he files with the town clerk a written statement under oath certifying as to his length of residency in that town. Perjury in the statement is punishable by a fine of not more than $5,000. Vermont Attorney General James M. Jeffords has stated, "Since the law does not contain an adequate definition of who is a student and who is a resident, there are bound to be some conflicts before we can get this straightened out."[18]

In some university towns, college students represent a sizable percentage of potential voters and older residents of such communities have expressed fear that youth would "take over" municipal governments, would vote large sums for schools and other purposes and then leave the community with a considerable debt. Robert H. Quinn, Massachusetts Attorney General, estimated that in Massachusetts communities, including Cambridge and Williamstown, students would represent 25 to 50 percent of potential voters; in Amherst, site of the University of Massachusetts and Amherst College, the figure could pass 50 percent. In Wisconsin, persons 18 through 20 years of age number 241,070 or 5.5 percent of the state population; yet in the college town of Whitewater, 18 through 20 year olds numbered 4,446 compared to 5,585 in the 21 and older group.

Justice Raymond E. Peters of the California Supreme Court commented on the municipal election in Berkeley in which 51,464 votes were cast.[19]

> Of 27,000 students at the University of California, no more than 9,000 (freshmen through juniors) are likely to be in the 18-20 age group. If typical registration percentages adhere, no more than 5,000 or 6,000 of these minors would register to vote. Even if every single one of these minors registered in Berkeley, which is highly unlikely, and even if every one then voted (which is more unlikely), the *vote* total would be increased no more than 10 percent, and the rolls an even lesser percentage. Nor, among this highly educated group, is it very probable that all 5,000 minors would vote the same way on any issue.

Opinions of Attorneys General

The National Association of Attorneys General, an affiliate of the Council of State Governments, in a memorandum to its members requested copies of opinions relating to the legal residence of the 18-year-old voter. Thirty-two opinions relating to some aspect of the voting issue or the age of majority have been received. The range of the opinions was broad although on some aspects of the issue there was considerable agreement if not a consensus. The California Attorney General observed that:

> It is not disturbing that contrary legal opinions have been expressed. In a new area, where there are no specific statutes or prior cases, opinions of lawyers can and do differ. That is why we have courts — to settle such difference of legal opinion. It should be realized that the Attorneys' General opinion is advisory, not binding on a county. A county is free to follow it if the reasoning and authorities cited are convincing or a contrary view could be followed.

There was fairly general agreement on at least five aspects of the voting residence issue: (1) for purpose of voting a person will neither gain or lose residence as a consequence of attending an educational institution;[20] (2) lacking congressional enactments and specific state statutes, residency for voting purposes is no different than the legal residence of such persons for other purposes; (3) domicile is determined by actions, intent, statutes, and relevant court decisions; (4) for the purpose of voting an individual may have only one domicile which cannot be lost until another is gained; and (5) each case will be different and the varying factual situations cannot be identified with any degree of certainty; any attempt to deal exhaustively with the different situations which may arise, will of necessity fail because some situation will be omitted or overlooked.

At one end of the spectrum were holdings that the legal residence of a student is that of his parents and he should register from that residence before departing for school. At the opposite end of the spectrum were the views of the Massachusetts and Maine Attorneys General that for the purpose of voting (1) an emancipated or unemancipated minor over 18 has the right to establish his own domicile with or without consent of his parents or guardians; (2) the fact that a minor over 18 is not emancipated financially or otherwise from his parents has no bearing on his right to choose his own domicile for voting purposes. However, a Deputy Secretary of State in Massachusetts advised that ordinarily the domicile of a legitimate minor child is that of his father and at this writing city and town clerks are following this advice.[21] The Florida Attorney General held that a requirement that university students register at their parents' locale is legally and constitutionally suspect. This opinion held that the burden of proof of ineligibility to register is on the challenger. To the contrary, the Kentucky Attorney General advised local election officials to have the student present a statement from his parents stating that he is free from parental control.[22]

The Louisiana Attorney General averred that state law requires students to file a letter of intent declaring that the parish is their domicile for voting purposes; the letter must be filed with election officials six months prior to voting. Other States have similar requirements. The New Hampshire Attorney General observed that anyone who contends his name is

illegally kept from registration lists may file a complaint in the Superior Court and be entitled to an immediate hearing.

Opinions of the Maryland and Virginia Attorneys General suggested a number of factors to be considered by election officials in determining residence of college students such as the permanent address given by the student at the time of his annual registration with the university; the permanent address shown on his draft card, automobile insurance, and driver's license; the student's plans upon graduation — whether residency is for an indefinite period or for the limited purpose of completing his education; payment of out-of-state tuition rates; voter registration in another jurisdiction; location of bank accounts; purchase of insurance policies from local broker; home ownership or rental; identification with the community; custom of returning to parental home during vacations; degree of freedom from parental control and economic self-dependence in the community. The opinions stated that none of the above factors is absolutely determinative but might be viewed as indicative of a student's intent.

Meanwhile, the Midwestern Conference of Attorneys General on August 25, 1971, resolved that State Legislatures be encouraged to establish statutory guidelines and relevant indicia for determining place of residence of all who seek to vote. They also resolved that "registrars, judges, elections clerks and challengers be permitted to question under oath any person, college student or otherwise, who seeks to register or vote on the basis of these indicia and such others which may become relevant for the purpose of determining the qualifications and residence of the voters."

The question of intent and permanency of residence elicited varying opinions. How long must residency endure to be considered permanent? The Idaho Attorney General stated that "intent to stay in a place permanently or temporarily is subjective and thus not ascertainable by objective observation. . . . The franchise is too precious for mechanical standards to dictate cold objective judgments which could easily prove inaccurate. Therefore, the residence determination for voting purposes should be left for the voter himself to determine." A new Iowa law provides for mobile deputy voting registrars who have registered many students on college campuses.

The North Dakota Attorney General concluded that the fact that the U.S. Bureau of the Census, in counting population, counts students living in college towns does not modify or amend state laws governing determination of domicile for the purpose of voting.

The Illinois Attorney General held that registration in Illinois requires only proof of age, six months residence in the State, and 30 days in the precinct. County clerks who required students to produce a marriage certificate, a driver's license, proof of employment, or other special

requirements before they could register students are exceeding the legal requirements.

The Florida Attorney General emphasized that under the Twenty-sixth Amendment and the Voting Rights Act of 1970, young adults do have the right to vote and are therefore sui juris (possessing full social and civil rights) for that purpose and do have the power to form the requisite intent for that purpose. He also stated that:

> The dominant "compelling" state interest is . . . to induce those new potential voters between eighteen and twenty-one to "drop in" the political process. Every caution should be indulged to prevent these voters from "dropping out" of the fundamental process of voting as a universal exercise of democracy. On the local level, any restriction which would deny participation in the selection of those office-holders who most directly govern a person could very well be viewed as constitutionally infirm and an abridgment of the franchise.

On August 27, 1971, the California Supreme Court decided that nine unmarried minors newly enfranchised by the Twenty-sixth Amendment and residing apart from their parents shall be treated like other voters for the purposes of acquiring voting residence and shall not be presumed to reside with their parents. The parents of one petitioner lived in Argentina; the parents of other petitioners lived in Hawaii, Arizona, and in California jurisdictions up to 700 miles from their claimed permanent residence. Registrars of voters in the city and county of San Francisco, Alameda, Santa Barbara, San Diego, and Los Angeles counties had refused to register the petitioners because they did not register at their parental address.

In a unanimous decision the court held that:

> Compelling young people who live apart from their parents to travel to their parents' district to register and vote or else to register and vote as absentees burdens their right to vote. . . . Such young people would be isolated from local political activity, with a concomitant reduction in their political influence and information. The burden placed on youth would be different than that placed on other absentee voters. The youth, unlike other absentee voters, claims his current residence as his domicile but would be disqualified solely "on account of age" . . . .
>
> An unmarried minor must be subject to the same requirements in proving the location of his domicile as is any other voter. Fears of the way minors may vote or of their impermanency in the community may not be used to justify special presumptions — conclusive or otherwise — that they are not bona fide residents of the community in which they live.

The California opinion relied in part on the legislative history of the Twenty-sixth Amendment and the Voting Rights Act of 1970; it also cited *Carrington* v. *Rash,* 380 U.S. 89 (1965) in which the U.S. Supreme Court held unconstitutional a Texas statute which prevented persons entering the State as soldiers from acquiring a voting residence in the State while soldiers. In holding that Texas could not conclusively presume soldiers to be transients, the Court rejected the State's claim that soldiers could "take over" a small town near the base. The Court concluded in this case that " 'fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." The California court proceeded to hold that "California law also compelled respondents to treat citizens eighteen years of age or older as adults for all purposes related to voting."

Other courts have arrived at similar decisions (see *Wilkins* v. *Bentley* 189 N.W. 2d p. 423, a 1971 decision of the Michigan Supreme Court).

It can be seen that divergent opinions exist on determination of residence of college students in the 18- through 20-year-age bracket. However, the predominant number of opinions and the cases thus far decided in the high U.S. or state courts is that the younger voter has the right to determine his residence in the same manner as a voter aged 21 or more.

5

Conclusions

In time, lowering the age of majority will have profound effects on the lives of young people and their parents. Conferring on young people the power to contract, own, and convey property, make wills, marry without parental consent, and vote gives them considerably more status in our society.

However, not all young people will take advantage of their new status immediately; some parents will be reluctant to give their children new responsibilities. It will take time for the effects of the new laws to be felt.

For young people the laws require assumption of new responsibilities and privileges; for parents the law may mean relinquishment of responsibility for the care and education of their offspring at an earlier age. The social relations of young people have been considerably changed.

Lowering the age of majority to 18 might conceivably affect relations between students and college administrations; one of the disputed issues between students and administration has been whether the latter stands in place of the student's parents: the position of those who answer this question affirmatively would presumably be weakened should students attain their majority at 18.

Since lowering the age of majority would permit 18 year olds to own tools and equipment needed to engage in some occupations, it is possible that some students may be more likely to enter vocational and trade schools rather than a liberal arts college; it might also cause some youth to enter the labor market sooner than they would otherwise. If students find it possible to begin earning their living earlier this might encourage the year-round school or termination of high school a year earlier.

Despite the changes, it seems likely, as is frequently the case, that lowering of the age of majority will not have as much impact, especially immediate impact, as those on either side of the question anticipate.

Footnotes

1. *Report of the Massachusetts Legislative Research Council Relative to Lowering the Age of Majority,* January 20, 1971, pp. 7-8. This report includes considerable detail on the historical development of the age of majority.

2. Henry Campbell Black, *Black's Law Dictionary,* 4th ed. (St. Paul, Minnesota: West Publishing Company, 1951).

3. Ibid.

4. Survey by the Nevada Legislative Counsel Bureau, 1971.

5. Alaska Legislative Council, *The Law and Age in Alaska; A Compendium of Laws Citing Age Specifications,* December, 1966, "Foreword."

6. *Report of Governor William G. Milliken's Special Commission on the Age of Majority,* February 1971, p. 7.

7. In this connection see *Toward a New Activism,* Report of Governor Daniel J. Evans' Commission for Youth Involvement, 1969, especially Chapter 5.

8. Massachusetts, *Report of the Legislative Research Council Relative to Lowering the Age of Majority,* p. 10.

9. *Rutland Daily Herald,* Rutland, Vermont, May 8, 1971.

10. *The National Observer,* July 26, 1971, p. 3.

11. Clay Buchanan, Information Memorandum No. 202.20222, July 15, 1971.

12. Memorandum from James T. Fleming, Director, Kentucky Legislative Research Commission, July 14, 1971.

13. Utah adopted similar legislation in 1971.

14. California Legislative Assembly Interim Committee on Elections and Constitutional Amendments, 1969 Interim Report, *Minimum Voting Age/Age of Majority,* p. 12, quoting Professor Edgar Bodenheimer, University of California Law School, Davis.

15. *Jacksonville, Florida Times Union,* August 10, 1971.

16. Joseph H. Dolan, *Report to the President's Commission on Registration and Voting Participation on Lowering the Voting Age to 18,* January 1, 1964, p. 4.

17. Ibid.

18. *The Lexington Leader,* Lexington, Kentucky, July 1, 1971.

19. *Colette Jolicoeur, et al., Petitioners* v. *Emmery Mihaly, et al., Respondents; James Tabilio, et al., Petitioners,* v. *Emmery Mihaly, et al., Respondents; Mark Steven Randell, et al., Petitioners* v. *James S. Allison, Registrar of Voters of the County of Los Angeles, Respondent,* August 27, 1971.

20. Article II, Section 4 of the California Constitution provides: "For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States,

or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any prison." Many other state constitutions and statutes have similar provisions.

21. Letter from Cornelius T. Finnegan, Jr. Research Assistant, Massachusetts Legislative Research Council.

22. The opinion resulted in a case being brought, *Bright, et al.* v. *Baesler, et al.*, Civil Action 2249.

23. *Jolicoeur, et al.* v. *Mihaly, et al.; Tabilio, et al.* v. *Mihaly, et al.; Randell, et al.* v. *Allison*. One justice wrote a concurring opinion in which two other justices joined.

Citations To Statutes

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5 British Family Law Reform Act, 1969, Halsbury's Statutes of England, Third Ed. 1969 Statutes, London, Butterworths, 1970.

8 Vermont Public Law 90 of 1971.

9 Tennessee, Chapter 162, Public Acts of 1971.

9 Tennessee, Chapters 161 and 71, Public Acts of 1971.

10 Michigan, Public Law 79 of 1971.

10 North Carolina, Chapters 585 and 1231, Laws of 1971.

11 Illinois, Public Acts 77, 1229 and 1228 of 1971.

11 Washington, Chapter 17, Laws of 1970 and Chapter 292, Laws of 1971.

11 New Mexico, Chapter 213, Laws of 1971.

12 Kentucky, Revised Statutes, Sec. 384.090 (1952); Chapter 21, KRS Secs. 389.010 (1), 394.020, 394.030, 405.390 (1964); KRS 2.015 (1968).

13 KRS 29.025 and Senate Bill 245, 1970.

13 Georgia Annotated Code, Secs. 20-201, 29-106, 48-111; Georgia Laws of 1971, Code Chapter 88-29; Senate Bill No. 42.

13 Arkansas, Acts 10, 44 and 467 of 1971.

13 Massachusetts, Chapters 291, 382, 253, 370 and 255, 1971 Statutes.

13 Montana, Chapters 240 and 423, Laws of 1970.

13 Maryland, Annotated Code, Chapters 121, 720, 603, 338, 758, 601, 328 and 355.

14 Connecticut, Public Acts of 1971, 8, 117 and 304.

14 Maine, Chapter 577, Public Laws of 1969.

14 Nebraska, Chapter 38-101 Revised Statutes 1969 Supplement; Chapter 42-102 Revised Statutes 1971 Supplement.

14 Oregon, Chapters 726, 437 and 381, Laws of 1971.

14 North Dakota, Century Code, Vol. 3, 1971 Supplement, 14-10-01 and 14-10-02.

14 Florida, Chapter 71-147, Session Laws of 1971.

16 New Hampshire, Chapter 318, Laws of 1971.

22 Alaska, Chapter 245, Laws of 1970.

27 Iowa, Chapter 1039, Acts of the Sixty-Third General Assembly, Second Session (1970).

Attorneys General's Opinions

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25 Evelle J. Younger, California Attorney General, in communication dated July 20, 1971, to editors and news directors.

26 Robert H. Quinn, Massachusetts Attorney General, in an opinion dated July 21, 1971, addressed to Secretary of the Commonwealth.

26 James S. Erwin, Maine Attorney General, dated July 28, 1971, addressed to the Deputy Secretary of State.

26 Robert L. Shevin, Florida Attorney General, dated August 3, 1971, to the Secretary of State.

26 John B. Breckinridge, Kentucky Attorney General (undated).

26 Jack P. F. Gremillion, Louisiana Attorney General, dated July 1, 1971, to the Director of the Board of Registration, Pentagon Courts.

26 Warren B. Rudman, New Hampshire Attorney General, Memorandum of Law to Supervisors of Checklists, dated August 19, 1971.

27 Andrew P. Miller, Virginia Attorney General, dated July 21, 1971, to the Secretary, State Board of Elections.

27 Francis P. Burch, Maryland Attorney General, Henry R. Lord, Deputy Attorney General and E. Stephen Derby, Assistant Attorney General, dated September 21, 1971, to Secretary of State.

27 John F. Croner, Idaho Assistant Attorney General, dated August 17, 1971, addressed to the Assistant Secretary of State.

27 Helgi Johanneson, North Dakota Attorney General, dated September 1, 1971, to State's Attorney, Ward County, Minot.

27 William J. Scott, Illinois Attorney General, dated September 29, 1971, to Representative Arthur A. Telcser.

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